

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

This final rule makes several streamlining and clarifying amendments to the regulations for the HOME Investment Partnerships Program (HOME Program). The final rule incorporates a number of statutory changes to the HOME Program. The final rule also updates the regulations to reflect the provision of housing assistance to Indian tribes under the Native American Housing Assistance and Self-Determination Act of 1996. Further, the rule clarifies the consortia requalification requirements by codifying the streamlined approach adopted beginning with the Fiscal Year (FY) 1999 grant cycle. Further, the final rule increases the flexibility of participating jurisdictions in using program income to pay administrative costs. Additionally, the final rule makes several other non-substantive corrections and clarifications to the regulations.

DATES: Effective Date: **October 31, 2002**

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7164, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708-2470. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

Summary of HOME Final Rule Changes

Elimination of Federal Preferences Make conforming changes to HOME regulations to reflect the elimination of the Federal preferences.

Section 514 of the Quality Housing and Work Responsibility Act (QHWRA) of 1998 amended section 6(c)(4)(A) of the Housing Act of 1937, thereby permanently eliminating the Federal preferences for selecting public housing residents and Section 8 tenant-based rental assistance (TBRA) recipients (which had been suspended since 1995) and establishing a system of local selection preferences. The HOME statute and regulations refer to Federal preferences in two areas: 1) selection of families for HOME TBRA (50% of assisted families must qualify for or would qualify in the near future for a Federal preference; and 2) the written tenant selection criteria for required for HOME-assisted rental housing (must give reasonable consideration to families that qualify for a Federal preference). PJs using HOME funds for TBRA programs may establish local preferences for the provision of this assistance. Written tenant selection criteria will no longer be required to reflect Federal preferences. (§§ 92.209 and 92.253)

Formula allocations. Amend the final regulation to reflect Section 214 of HUD's FY 1998 appropriations act (the so-called "grandfathering clause).

This statutory change permits HOME PJs that fall below the \$500,000 minimum participation threshold (\$335,000 in years in which the HOME appropriation is less than \$1.5 billion) to continue to participate in the HOME Program. (Consortia that fail to renew the membership of all member jurisdictions are not covered by this provision.) The statutory change, which was effective upon enactment, eliminated the problem of PJs with small allocations losing their allocations from such causes as a decrease in the HOME appropriation, an increase in the total amount of set-asides from the HOME appropriation, or an increase in the number of PJs. (§ 92.50)

Prohibition on Use of HOME Funds for Public Housing Activities. Amend prohibited activities provisions to include new construction of public housing.

Section 522 of QHWRA amended Section 9 of the U.S. Housing Act of 1937, which had the effect of extending the existing prohibition against the use of HOME for public housing modernization and operating subsidy to cover new construction of public housing as well. This change was effective on 10/1/99. (§ 92.214)

Homeownership Income Qualification Revise rule to reflect 1998 statutory fix for HOME-assisted lease-purchase and contracts to purchase housing to be constructed.

The original HOME statutory language required that a HOME-assisted homebuyer qualify as low-income at the time of the investment of HOME funds or at the time of occupancy, whichever is later. This provision caused problems in lease purchase programs and with contracts to purchase housing to be constructed, where several months or years could elapse between the initial income determination and the investment of HOME funds (transfer of the property). When homebuyers' incomes rose above 80% of median they were prohibited from completing the purchase with HOME funds. Section 599B of the Quality Housing and Work Responsibility Act of 1998 eliminated the provision that HOME-assisted homebuyers requalify as income eligible at the time of occupancy or when the HOME funds are invested, whichever is later. The new statutory language requires the homebuyer to qualify as low-income: 1) in the case of a contract to purchase existing housing, at the time of purchase; 2) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; or 3) in the case of a contract to purchase housing to be constructed, at the time the contract is signed. This change was effective immediately upon passage of QHWRA. (§§ 92.216 and 92.254)

Administrative and Planning Costs. Permit an amount equal to 10% of program income earned and retained by subrecipients and State recipients to be used for administrative and planning costs.

The final rule will be amended to correct a drafting error in the final rule that unintentionally limited the flexibility of PJs in using a portion of program income to pay administrative costs. The final rule, as originally promulgated, stated that a PJ was permitted to use up to 10% of program income deposited in its local account during the program year for administrative and planning costs. This provision prohibited a PJ from counting toward its administrative allowance a portion of any program income that it permitted State recipients or subrecipients to retain pursuant to a HOME written agreement. To count 10% of program income received by State recipients and subrecipients toward the PJ's administrative allowance, the funds would have had to be returned to the PJ's local HOME account. The rule will be amended to permit PJs to use 10% of both program income deposited in the local HOME account and program income earned and reported by State recipients and subrecipients for eligible administrative and planning costs. PJs may permit State recipients and subrecipients to use this additional authority to incur administrative and planning costs or may use it for costs incurred directly by the PJ, provided that the overall 10% limitation is not exceeded. (§ 92.207)

Prohibited activities Clarify that HOME funds may not be used to pay delinquent taxes, fees or charges associated with assisted properties.

HUD has interpreted the HOME statute to prohibit the use of HOME funds to pay delinquent taxes, fees or charges associated with assisted properties since the inception of the program. However, the Department continues to receive questions regarding the eligibility of this use so frequently that it is being added to the rule in an attempt to eliminate further confusion. HOME funds can be used to pay for reasonable acquisition costs. However, back property taxes, construction liens and similar encumbrances are obligations incurred by the property owner prior to the date of the purchase of the property with HOME funds rather than a cost of acquisition. There is no prohibition against the seller using the proceeds of a HOME-assisted purchase to satisfy these liens and deliver clear title to the purchaser. (§ 92.214)

Formula Factors. Amend the final rule to permit HUD to use renter-households in poverty rather than renter-families in poverty in the HOME formula.

The U.S. Census Bureau does not routinely produce the renter-family in poverty indicator. HUD would have to procure a special tabulation of the 2000 census data in order to continue using that variable. A special tabulation would not be available until late 2003, thereby delaying the use of updated census data in HOME formula allocations. The renter-household in poverty measure is publicly available data and has the further advantage of measuring poor renters who are not living in a family household. The impact of this change on allocations will be minor for most participating jurisdictions. (§ 92.50(c)(3))

Consortium Requalification. Amend rule to better reflect the streamlined requalification procedures adopted in FY 1999.

Beginning in FY 1999, HUD permitted consortia to adopt an automatic renewal process similar to the CDBG urban county process. Under this requalification procedure, the consortium's lead entity must notify each member of the right to elect not to continue to participate in the consortium. No further action is required of members that seek to continue to participate. This amendment references those streamlined procedures. (§ 92.101)

Written Agreements Between PJs and Project Owners and Developers Clarify that Subpart H ("other Federal") requirements should be included in these written agreements.

When the HOME final rule was published in September, 1996, the written agreement section was expanded to provide more detail about the requirements that must be included in each type of HOME written agreement. However, several applicable requirements of Subpart H were inadvertently omitted from § 92.504(c)(3), which covers written agreements between participating jurisdictions and the owners, developers and sponsors of HOME-assisted housing. The regulation will be amended to address all applicable Subpart H requirements, so that PJs will be sure to include them in these written agreements. (§ 92.504)

Definition of Homeownership. Amend the definition of "homeownership" to permit 50-year leasehold interests on trust or restricted Indian lands.

This amendment eliminates an inconsistency between the HOME definition of "homeownership" and a provision of NAHASDA. HOME currently considers 99-year leasehold interests as homeownership; NAHASDA authorizes only leases not to exceed 50 years. This inconsistency effectively precludes the use of HOME for homeownership on trust or restricted Indian land unless a waiver is obtained. (§ 92.2)

HOME Set-Aside for Indian Tribes. Eliminate the reference to reserving 1% of each annual HOME appropriation for a competitive program for Indian tribes. (§ 92.50(b))

NAHASDA eliminated the Indian HOME Program.

Record keeping Add requirement that PJs keep records on site and neighborhood standards reviews.

The HOME regulations require that PJs conduct a site and neighborhood standards review for projects that involve new construction of rental housing before proceeding with the project. Due to a drafting oversight, the regulations do not make explicit the

requirement that participating jurisdictions maintain records documenting the results of the required site and neighborhood standards review. (This requirement is included the HOME OMB paperwork submission but was not made explicit in the recordkeeping provisions of the HOME regulations). (§ 92.508)